



LAND USE HEARING EXAMINER

Lee Raaen
Hearing Examiner

CITY OF KENT

In the Matter of the Application of)	No. RZ-2014-1
)	KIVA #RPP4 - 2140847
Threasa Lynn Melton,)	
On behalf of AFG Holdings, LLC)	
)	New Alaska Mobile Home Park
)	Rezone
)	
)	FINDINGS, CONCLUSIONS,
<u>For a Rezone</u>)	AND RECOMMENDATION

SUMMARY OF DECISION

The Hearing Examiner recommends that the Applicant's request to rezone three parcels totaling 2.82 acres from MHP, Mobile Home Park, to MTC-1, Midway Transit Community-1 at 2703 South 240th Street and 24142 27th Avenue South be **APPROVED**.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on August 6, 2014.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Sharon Clamp, City Principal Planner
Lee A. Michaelis, AICP, Applicant's Representative
Robert Thorpe, for Applicant

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated July 30, 2014
2. Distribution of Staff Report and Agenda with Declaration of Delivery, dated July 30, 2014
3. Notice of Public Hearing; Affidavit of Posting, dated July 29, 2014; mailing addresses; Notice of Public Hearing AD with *Kent Reporter* confirmation, dated July 22, 2014
4. Distribution of Public Notice with Declaration of Delivery, dated July 25, 2014

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5. MDNS with Certificate of Posting, dated July 16, 2014
6. Distribution of the Mitigated Determination of Nonsignificance (MDNS) and Decision with Declaration of Delivery, dated July 16, 2014
7. City Environmental Review Report Decision Document, dated July 14, 2014
8. SEPA Environmental Checklist, dated May 15, 2014
9. Notice of Application with affidavit of posting, dated June 6, 2014
10. Distribution of Notice of Application with Declaration of Delivery, dated June 6, 2014
11. Notice of Application AD copy dated June 6, 2014, with *Kent Reporter* confirmation, dated June 3, 2014
12. Notice of Completeness Letter, dated May 30, 2014
13. Letter from Katherin Johnson to Lee Michaelis, dated May 23, 2014
14. Letter from Lee Michaelis to Sharon Clamp, dated May 15, 2014
15. Notice of Incompleteness Letter, dated April 10, 2014
16. Zoning Map Amendment (Rezone) Application, received March 20, 2014
17. Description of Proposal, received May 15, 2014
18. Letter from Lynn Melton to Residents of New Alaska Mobile Home Park, received May 15, 2014
19. Relocation Report & Plan, prepared by R.W. Thorpe & Associates, Inc., revised May 15, 2014
20. Applicant's Response to Standards and Criteria for granting a request (Section 15.09.050(C)), prepared by R.W. Thorpe & Associates, Inc., revised May 15, 2014
21. Policy Analysis Matrix, prepared by R.W. Thorpe & Associates, Inc., revised May 2014
22. Legal Description, prepared by R.W. Thorpe & Associates, Inc., dated May 15, 2014, and Vicinity Map, prepared by R.W. Thorpe & Associates, Inc., revised May 15, 2014
23. Small 8 ½ x 11 Detailed Site Plan (SP 1.0) and Site Map (SP 2.0) and Large Detailed Site Plan (SP 1.0) and Site Map (SP 2.0), revised May 15, 2014
24. Midway Sewer District – Certificate of Sewer Availability, signed January 3, 2014
25. Highline Water District – Certificate of Water Availability, signed January 8, 2014, with property and hydrant location map, and Test Report, printed January 7, 2014

FINDINGS

1. Threasa Lynn Melton, on behalf of AFG Holdings, LLC (Applicant), requests a rezone of three parcels totaling 2.82 acres from Mobile Home Park (MHP), to Midway Transit Community-1 (MTC-1). The parcels are located at 2703

South 240th Street and 24142 27th Avenue South.¹ *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 5; Exhibit 16; Exhibit 23.*

2. The City of Kent (City) determined the rezone application to be complete on May 30, 2014.² On June 6, 2014, the City posted notice of the rezone application, sent notice to public agencies and parties of record, and published notice in the *Kent Reporter*. The City notified property owners within 300 feet of the subject property of the application. The City mailed or emailed notice of the open record hearing associated with the rezone request to public agencies and all owners of property within 300 feet of the subject property; published notice in the *Kent Reporter*; and posted notice on the subject on July 25, 2014. *Exhibit 1, Staff Report, page 6; Exhibit 3; Exhibit 4; Exhibit 9; Exhibit 10; Exhibit 11.*
3. The City acted as lead agency and analyzed the environmental impact of the proposed rezone as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW.³ The City determined that with one condition the proposal would not have a probable significant adverse impact on the environment, and issued a Mitigated Determination of Non-Significance (MDNS) on July 16, 2014. The condition requires the property owner to submit for the City's Approval a new relocation plan/report in accordance with Kent City Code (KCC) 12.0115.320 and 12.05.330. The City used the optional Determination of Non-Significance (DNS) process under Washington Administrative Code (WAC) 197-11-355. The SEPA comment period occurred concurrently with the Notice of Application, and ended on June 6, 2014. The MDNS was not appealed. *Exhibit 1, Staff Report, page 5; Exhibit 5; Exhibit 6; Exhibit 7; Exhibit 8; Exhibit 9; Exhibit 11.*
4. The subject parcels are part of 141 acres annexed to the City in 1961 under Ordinance No. 1124. Parcel 3603600330 (2.53 acres) is located west of 28th Avenue South, an unclassified street. This parcel contains a duplex, a single family residence, and a mobile home park with nine mobile homes and 17 recreational vehicles. Parcel 3603600450 (9,600 square feet) is undeveloped and adjacent to the south of the mobile home park. Parcel 360360445 (3,000 square feet) is also undeveloped and located adjacent to Parcel 3603600450 and bordered by South 242nd Street. Pacific Highway South (SR-99) is located a block to the east. The parcels contain grass, shrubs,

¹ The properties subject to the rezone request are identified by King County tax parcel numbers 3603600330, 3603600450 and 3603600445. *Exhibit 1, Staff Report, page 2.* A legal description of the property is included with the Applicant's Rezone Application. *Exhibit 22.*

² The City's Notice of Application states that the date of determination of completeness was May 27, 2014. The City's Notice of Completeness letter is dated May 30, 2014. *Exhibit 9; Exhibit 12.*

³ The City issued a Comprehensive Plan Review and Midway Subarea Planned Action Final Environmental Impact Statement in 2011.

and deciduous and evergreen trees. The area is generally flat with one isolated area along the southwest corner containing a 43 percent slope. City staff prepared an Environmental Review Report Decision Document, dated July 14, 2014. No sensitive areas were identified. City Planner Sharon Clamp testified that any future development affecting this slope would be reviewed at the time of permit application. *Exhibit 1 Staff Report, pages 4 and 5; Exhibit 7; Exhibit 22; Testimony of Ms. Clamp.*

5. The City Council approved a Comprehensive Plan Land Use Map amendment on December 13, 2011. This Comprehensive Plan amendment adopted a Midway Subarea Plan (MSP) (Ordinance 4009) changing the designation of the proposed rezone area from Mobile Home Park (MHP) to Transit Oriented Community (TOC). The overall goal of the MSP is to create a dense, pedestrian-friendly, sustainable community that provides jobs, housing, services, and public open space around nodes of high capacity mass transit, while maintaining auto-oriented uses between the transit oriented nodes. The MSP supports the future extension of Sound Transit Link Light Rail service in the vicinity of the Pacific Highway South transportation corridor. The MSP contains design review standards to ensure compatibility of any redevelopment with adjacent multifamily uses to the west. City staff identified MSP Land Use goal MLU-1 --- to increase employment opportunities and housing choices in support of rapid light rail and mass transit options --- as relevant to the proposal.⁴ *Exhibit 1, Staff Report, page 7.*
6. The City Council also approved an area-wide rezone on December 13, 2011 (Ordinance 4013) rezoning properties in the immediate area of the subject site to Midway Transit Community (MTC-1). KCC 12.05.340 requires the owner of a mobile home park to obtain City approval of a relocation plan prior to the City's decision on a rezone request.⁵ Therefore, the City did not change the existing MHP zone of the three parcels in 2011. Properties to the east are within the Kent City limits and zoned MTC-1. Parcel No. 3603600440, abutting the subject properties to the southeast, is also zoned Mobile Home Park, but is not part of this rezone application. Properties to

⁴ R.W.Thorpe & Associates, Inc. prepared a compatibility matrix and identified the following Midway Subarea Plan policies as relevant to the proposed rezone: Policies PLU-1.1 to 1.3, 1.6, 2.1, 3.1, 3.2; MUD-1.1 to 1.8, 2.1 to 2.3; 3.1 to 3.5, 3.8; 4.1 to 4.4, MH-1.1, 1.3 to 1.5; MT-1.1, 2.2 to 2.4, 3.1 to 3.4, 4.1, 5.1, 5.2, PM&OS-1.2, 2.4; MI-1.1, 1.3; MIC-1.2, 1.3. *Exhibit 21.*

⁵ KCC 12.05.340 provides: "No mobile home park owner may close a mobile home park, or obtain final approval of a comprehensive plan or zoning redesignation until the mobile home park owner obtains a certificate of completion from the housing and human services office. The manager of housing and human services shall issue a certificate of completion only if satisfied that the owner has complied with the provisions of an approved relocation report and plan, the eviction notice requirements of RCW 59.20.080 and 59.21.030, the relocation assistance requirements of RCW 59.21.021 and any additional requirements imposed in connection with required city applications."

the north, south, and west are within the City of Des Moines. Highline Community college is located to the north and zoned Institutional Campus (I-C). Commercial uses to the south are zoned Transit Community (T-C). Multi-family developments to the west are zoned Multifamily Residential (RM-2,400). *Exhibit 1, Staff Report, pages 3 and 4; Exhibit 7.*

7. The City has determined that this is a non-project rezone, which would not generate additional transportation impacts. Sound Transit received funding in 2008 to extend light rail from SeaTac Airport to South 272nd Street, the southern boundary of the Midway Subarea. Any transportation impacts from subsequent development would be mitigated through Transportation Impact Fees, compliance with City roadway improvements construction standards, and compliance with mitigation measures from the 2011 City Comprehensive Plan Review and Midway Subarea Planned Action Final Environmental Impact Statement. *Exhibit 1, Staff Report, page 9.*
8. City Housing and Human Services Manager Katherin Johnson issued a Certificate of Completion of the Relocation Report and Plan for the New Alaska Mobile Home Park on May 23, 2014. The Mobile Home Park owner is required to submit a new relocation plan/report if the mobile home park is sold or redeveloped. Robert Thorpe, President, R.W. Thorpe & Associates, Inc.,⁶ testified that the Applicant had no plans to change the current mobile home park use and no projects on the property are planned. *Exhibit 5; Exhibit 13; Exhibit 18; Exhibit 19; Testimony of Mr. Thorpe.*
9. The Midway Sewer District issued a Certificate of Sewer Availability for Parcel No. 3603600330, dated January 3, 2014. The Highline Water District issued a Certificate of Water Availability for 2703 South 24th, dated January 8, 2014. *Exhibit 24; Exhibit 25.*
10. Lee A. Michaelis, AICP, Applicant Representative, testified that the proposed rezone would meet the City's rezone criteria. City Staff determined that the proposed rezone would be consistent with the City Comprehensive Plan and the City's rezone criteria and recommended approval of the rezone. *Exhibit 20; Testimony of Lee A. Michaelis.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hold an open record hearing on quasi-judicial actions, including this rezone, and to issue a written recommendation for final action to the City Council, pursuant to RCW 35A.63.170 and Kent City Code Chapters 2.32, 12.01 and 15.09.

⁶ R. W. Thorpe & Associates, Inc., prepared the Applicant's Detailed Site Plan and Site Map. *Exhibit 23.*

Criteria for Review

KCC 15.09.050.C sets forth the standards and criteria the Hearing Examiner must use to evaluate a request for a rezone. A request for a rezone shall only be granted if:

1. The proposed rezone is consistent with the Comprehensive Plan;
2. The proposed rezone and subsequent development of the site would be compatible with development in the vicinity;
3. The proposed rezone will not unduly burden the transportation system in the vicinity of the property with significant adverse impacts which cannot be mitigated;
4. Circumstances have changed substantially since the establishment of the current zoning district to warrant the proposed rezone; and
5. The proposed rezone will not adversely affect the health, safety and general welfare of the citizens of the City of Kent.

The criteria for review adopted by the Kent City Council are designed to implement the requirement of chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

1. **The proposed rezone is consistent with the Comprehensive Plan.** The proposed rezone from MHP to MTC-1 would permit development consistent with the Midway Subarea Plan portion of the Comprehensive Plan and consistent with the subject parcels Transit Oriented Community (TOC) designation. Although no specific development has been proposed at this time, the Midway Subarea Plan supports the future extension of Sound Transit Link Light Rail service in the vicinity of the Pacific Highway South transportation corridor. The proposed rezone would support development consistent with Comprehensive Plan Land Use Goals allowing high-density uses in support of rapid transit investments. *Findings 1-10.*
2. **The proposed rezone and any subsequent development would be compatible with the existing neighborhood.** The subject parcels are within the Midway Subarea Plan which supports the future extension of Sound Transit Link Light Rail service in the vicinity of the Pacific Highway South transportation corridor. Properties to the east within the Kent City limits are already zoned MTC-1. The Midway Subarea Plan contains design review standards to ensure compatibility of any redevelopment of the site with the adjacent multifamily uses located to the west. *Findings 3-10.*
3. **The proposed rezone would not unduly burden the transportation system.** The proposed non-project rezone itself would not generate

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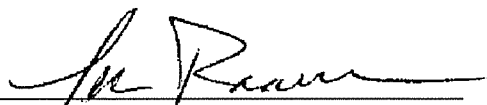
increased traffic. Traffic impacts from subsequent development would be mitigated through Transportation Impact Fees, compliance with City roadway improvements construction standards, and compliance with mitigation measures from the 2011 City Comprehensive Plan Review and Midway Subarea Planned Action Final Environmental Impact Statement. *Findings 3, 7-10.*

4. **Circumstances have changed substantially to warrant the proposed rezone.** Washington state courts have held that proof of changed circumstances are not required for a rezone if the proposed rezone and associated development implement policies contained in the comprehensive plan. *Bjarnson v. Kitsap County*, 78 Wn. App. 840 (Div. I, 1995); *Henderson v. Kittitas County*, 124 Wn. App. 747 (Div. III, 2004). On December 13, 2011, the City Council passed Ordinance No. 4009, which amended the City Comprehensive Plan by adopting the Midway Subarea Plan. The City Council also designated the subject properties and surrounding areas as Transit Oriented Community (Ordinance 4012) and rezoned the properties in the immediate area of the subject site to MTC-1 (Ordinance 4013). The rezone would bring the property into line with the Transit Oriented Community Comprehensive Plan designation. *Findings 1-10.*
5. **The proposed rezone would not adversely affect public health, safety and general welfare.** The City gave reasonable notice of the rezone application and the associated open record hearing. The City issued a Comprehensive Plan Review and Midway Subarea Planned Action Final Environmental Impact Statement in 2011. The City reviewed the Applicant's Environmental Checklist for the proposed rezone and issued a Mitigated Determination of Nonsignificance with one condition requiring a new/revised mobile home park relocation plan/report if the mobile home park is sold or redeveloped. City water and sanitary sewer services are available to the parcels. The proposed rezone to MTC-1 would make these parcels consistent with the Comprehensive Plan TOC designation for the area. *Findings 1-10.*

RECOMMENDATION

Based upon the preceding Findings and Conclusions, the Hearing Examiner recommends that the Applicant's request to rezone three parcels totaling 2.82 acres from MHP, Mobile Home Park, to MTC-1, Midway Transit Community-1 at 2703 South 240th Street and 24142 27th Avenue South be **APPROVED**.

DATED this 13th day of August 2014.



LEE RAAEN
Hearing Examiner
Sound Law Center